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Paper No. 6

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JAN 03 2002

OFFICE OF PETITIONS

In re Application of
Walter C. Lin
Application No. 09/442,868
Filed: November 18, 1999
Attorney Docket No. 1200471-991180

ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(a), or in the alternative under 37 CFR 1.137(b), filed July 31, 2002. The petition under 37 CFR 1.137(a) is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181 (no fee) in light of petitioner's statement that no Office action was received.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled, "Renewed Petition under 37 CFR 1.181" or "Renewed Petition under 37 CFR 1.137(b)".

The above-identified application became abandoned for failure to timely file a proper response to the non-final Office action, mailed September 13, 2001, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 14, 2001. A Notice of Abandonment was mailed on July 16, 2002. Consideration of the petitions under 37 CFR 1.181 and 37 CFR 1.137(b) follows.

Petition Under 37 CFR 1.181:

Petitioner contends that he never received the September 13, 2001 Office action. Petitioner has not met the showing required to establish nonreceipt of an Office action. To withdraw the holding of abandonment due to nonreceipt of an Office action, a practitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed.¹ Regarding the docket record, in the case where the nonreceived Office action set a three month period for reply (as in the instant case), "a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action."

¹ See MPEP 711.03(c)(II).

Petitioner has not submitted a copy of a docket record showing where the nonreceived Office action would have been entered had it been received and docketed.

Petition Under 37 CFR 1.137(b):

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The instant petition lacks item (1), the required reply. Petitioner has failed to submit a reply to the non-final Office action mailed September 13, 2001.

A copy of the September 13, 2001 Office action is enclosed for petitioner's convenience.

Petitioner included a fee of \$110. No fee was required for the petition to withdraw the holding of abandonment. The petition under 37 CFR 1.137(b) required a \$1,280 fee. As petitioner included an authorization to charge any additional fees to his deposit account, the difference of \$1,170 has been charged to Deposit Account No. 07-1896. On renewed petition, the 37 CFR 1.137(b) petition fee will be refunded to petitioner if petitioner can meet the showing to withdraw the holding of abandonment.

Further correspondence with respect to this matter should be addressed as follows:

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 Attn: Office of Petitions
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Telephone inquiries should be directed to the undersigned at (703) 305-0272.



Cliff Congo
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Office of the Deputy Commissioner
for Patent Examination Policy

Enc: Office action mailed September 13, 2001 (7 pages)